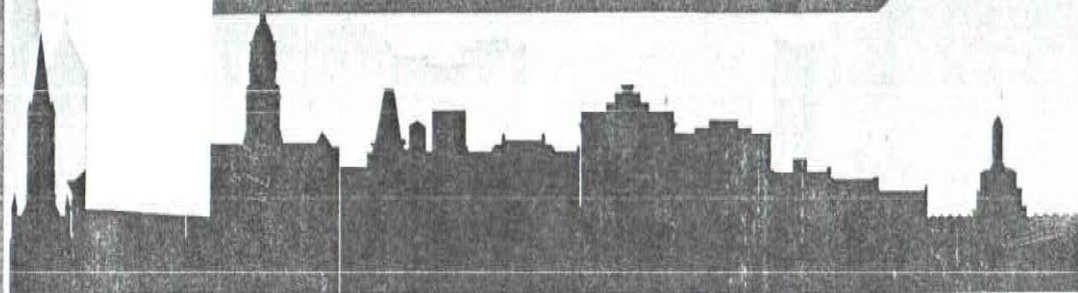


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Judge freezes SD10's share of TIFID funds

*DOR and SD10
will go to court*

*James S. Rosien
Leader Reporter*

Anaconda Public School District 10 will have to freeze its share of funds from the Mill Creek Tax Increment Finance Industrial District (TIFID) until a final resolution to the legal dispute with the Montana Department of Revenue (DOR) is determined in court.

That was the main thrust of Judge Ed McLean's ruling Friday morning in 3rd District Court following a short 45-minute hearing between the DOR, SDIO and Anaconda-Deer Lodge County.

McLean ordered the DOR to continue approving ADLC's taxing authority with regard to

the TIFID, but stipulated that the portion of revenue SDIO receives from Northwestern Energy's Dave Gates Power Generation Station would continue to be held in escrow and not be spent, at least until the court rules on the DOR's claim that SDIO's receipt of TIFID funds and placement into its flexibility fund amounts to double-taxation of county residents.

The two parties will have their day in court to argue their positions in January 2013, giving their attorneys several months for fact-finding and filing motions in the case.

The ruling effectively severed ADLC from the case except for one question, whether County Superintendent of Schools Michael O'Rourke as a county employee, has authority over SDIO's budget. In a telephone interview, O'Rourke stated that all school district budgets

do come through him at some point, but his role is to approve the mill values for budgets that are set by school boards.

Representatives from the

DOR said they "appreciated the ruling" and felt McLean's orders to the parties were "reasonable." "We look forward to the opportunity to resolve this

issue before the court," said Mary Ann Donnelly, DOR spokesperson, in a statement. "The department's purpose is to assure equity and fairness in

taxation."

The county also was happy with the order, Callaghan said.

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after the hearing. When asked whether the school district is handling the TIFID funds differently from the county, she stated that the county has no position on how SDIO uses the funds.

SDIO officials expressed their disappointment, however, with Dr. Tom Darnell, SDIO superintendent, saying the ruling returns the school district's finances to pre-TIFID levels from 2008, when "no funding was available for our infrastructure needs."

"All our infrastructure projects will be put on hold, the two most significant of which are the re-roofing of Lincoln School and the window and heating exchange system replacements at Dwyer (Elementary)," Darnell said following the hearing. "Obviously the Mitchell Stadium renovations will be put on hold, and the re-roofing of the Vo-Tech building. Those are projects that have already been approved. Wireless networking of the schools will be put on hold as well. Our operating budget isn't affected, just the infrastructure. It'll take us back to maintenance only."

SDIO Board Chair Steve Tozzi echoed Darnell's disappointment.

"We're unable to spend these funds that are needed for infrastructure repair, while other districts are allowed to spend theirs," said Tozzi, referring to the 30-plus school districts SDIO administrators have identified in Montana that are receiving tax remittance funds from TIF

districts. "The county gets their share, the state gets their share, the other 29 school districts get theirs, but ours is frozen? It is a statewide issue but it's being treated as just an Anaconda issue."

Kris Goss, attorney from the Montana School Board Association representing SDIO, had argued that the school district "believes resolution is possible through the legislature because the Department of Revenue's assertions are going to affect schools around the state. School District 10 is being asked to operate under a different interpretation of the law than other school districts."

Goss also argued that while the March 1, 2013 date set by the SDIO board of trustees had already passed for returning its first disbursement from the TIFID for the 2012-13 school year to the budget, amounting to approximately \$400,000, SDIO was still holding those funds in abeyance as agreed in negotiations with the DOR and the board could vote to continue to do so while those talks continue.

McLean, however, said that it would take another two, three or even four years before the Montana Legislature acts on how tax increment finance relates to school funding.

"The court isn't prepared to wait another two years. You're asking the legislature to do the court's job," McLean said from the bench. "The court has an obligation to the people of Anaconda-Deer Lodge County and the Department of Revenue to address their claim."

Darnell said he was disappointed that the judge didn't agree that the legislative process is the best avenue to address the issue, saying it will affect all school districts that have TIF districts, as well as all the school districts that have flexibility funds – over 300 in Montana, he said.

"The appropriate channel to proceed with this issue is the legislature because this does involve statutory authority, not past court decisions," Darnell said. "My opinion is that since it's legislative in nature, all affected parties should be

brought into the fray."

The DOR has previously stated that flexibility accounts, which can be funded through sources other than property tax levies, are "slush funds" that allow school districts to exceed their budgeting authority by not treating these funds as property taxes assessed for their general fund, which have a maximum allowable budget determined by a number of factors under state law.

The DOR has argued that the school district's share of TIFID funds should go into its general fund and offset property tax levies in the county by however much the funds exceed the district's maximum. In an Aug. 15, 2012 letter to the editor, previous DOR Director Dan Bucks wrote that "it appears that ADLC homeowners have paid an average amount per property of \$285 in double taxes since 2009, while ADLC commercial property owners have each paid an average of about \$804 in double taxes since 2009."

In a response, Darnell wrote that the tax rates to fund SDIO has decreased for property owners since the TIFID was established, with 17.59 fewer mills needed to fund the district for 2011-12 compared to 2007-08. He also has stated that the decision to place its share of TIFID funds into the district's flexibility accounts was made after consulting the Office of Public Instruction, which recommended that it be placed into any budgeted fund and not necessarily into the general fund.

Under Montana law, flexibility funds allow school districts to pay for such expenses as expansion and remodeling of facilities used for educational programs, removal and replacement of obsolete facilities, salaries, benefits, bonuses and incentives for classroom teachers, technology, student assessment and curriculum development. SDIO used a portion of its flexibility fund in 2011-12 to pay for bonuses to educational staff as well as \$1.2 million in renovations to school facilities.

The Anaconda Leader will have further reporting on tax increment finance and school funding in Montana in an upcoming issue.

50th Anniv



The Messer family started working in the family business. From left: Janet and Blaine Messer, daughter, Sheila, and son, Blaine, in Anaconda.

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accommodate future business the district, including a look at existing conditions and future needs in terms of infrastructure like roads, water and sewer with estimates for how much will cost to develop the area.

The preliminary engineering report not only will give so direction to the board, but will be used to apply for grant and other funding opportunities.

Three companies responded to the planning department request for qualifications and were interviewed for the job including Copper Environmental Consulting of Anaconda, Dr. HKM of Butte and Stahly Engineering of Helena.

The Mill Creek TIFID Board includes the county's Superintending Coordinator Carl Nyman, vice chair, Sen. Gene Vucko, School Superintendent Dr. Tom Darnell, Anaconda Local Development Corporation's Director Jim Davison and Rick Rivers, a local CPA. Rivers abstained from the vote.

For more information, call Anaconda-Deer Lodge County Planning Department at 562-4010.

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